Supreme Court, U.S.
FILED

94 606 OCT - 4 1994

OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

STEPHEN A. KOCZAK

Petitioner

v.

JIM SMITH,
Secretary of State, State of Florida;
ROBERT A. BUTTERWORTH,
Attorney General, State of Florida
ANDER CRENSAW
Minority Leader, Florida Senate
JAMES M. LOMBARD
Minority Leader, Florida House of Representatives,
VAN B. POOLE
Chairman, Florida Republican Party

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Stephen A. Koczak, *Pro Se*
2932 Macomb Street, N.W.
Washington, D.C. 20008
(202) 686-0953/363-4750

QUESTIONS PRESENTED

1. Whether, in egregious conflict with the decision on the same matter ("timeliness" and "untimeliness") by the Appeals Court for the Fifth Circuit, the U.S. Appeals Court for the Eleventh Circuit so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's power of supervision.?

2. Whether, by its unacknowledged and unpublished conflict with its own most recent prior decision on the same constitutional matter (i.e., its 1991 Panel finding the identical Florida Presidential Candidate Selection Committee to be constitutional but its 1994 Panel finding the same Committee to be unconstitutional), the U.S. Appeals Court departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision? Did it serve an ulterior purpose of the Appellate Court to sustain the lower court on "untimeliness" in order to avoid the embarrassment of having to confront directly and publicly its own recent contradictory decisions on the constitutionality of the Selection Committee?

3. Whether, even though knowing that the Supreme Court is primarily concerned to secure uniformity of judgments rather than to correct error, the Eleventh Circuit Appellate Court nevertheless departed, for its own purposes, from the accepted standards of uniformity and from the usual

course of judicial proceedings because of the exceptional embarrassing circumstances involved in the characteristics of the case before it.

4. Whether the United States District Court for the Southern District of Florida and the United States Appeals Court for the Eleventh Circuit, in derogation of the standards of uniformity, rendered judgments in conflict with United States Supreme Court decisions and departed from the usual course of judicial proceedings by failing to give the required close scrutiny to the statutes and precedents in these cases?

TABLE OF CONTENTS

Questions Presented	i
TABLE OF CONTENTS	iii
INTERESTED PARTIES	v
TABLE OF AUTHORITIES	vi
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED IN THE CASE	viii
OPINIONS IN THE CASE	2
JURISDICTIONAL GROUNDS IN THIS COURT	5
STATEMENT OF THE CASE	5
THE FLORIDA PRESIDENTIAL PRIMARY STATUTE NEEDS TO BE EXAMINED IN TERMS OF ITS CONSEQUENCES	22
REASONS FOR GRANTING THE WRIT	22
ABSENCE OF ALTERNATIVE MEANS OF ACCESS TO BALLOT	23
CONCLUSION	24
CERTIFICATE OF SERVICE	27
APPENDICES	I
TABLE OF DOCKET ENTRIES, COURT ORDERS DECISIONS AND OTHER MATERIAL	II
APPENDIX 1	III
APPENDIX 2	VII
APPENDIX 3	XI
APPENDIX 4	XV
APPENDIX 5	XVII
APPENDIX 6	XIX

APPENDIX 7 XXII
APPENDIX 8 XXIV
APPENDIX 9 XXVI
APPENDIX 10 XXVII
APPENDIX 11 XXIX
APPENDIX 12 XXX
APPENDIX 13 XXXII
APPENDIX 14 XXXIII

INTERESTED PARTIES

To assist in the consideration of this appeal and pursuant to Rule 14 of the Supreme Court of the United States, there appear below the names and titles of the parties who were involved in the events leading to this case and have an interest in this outcome of this petition:

JAMES SMITH, Secretary of State, State of Florida

ROBERT A. BUTTERWORTH, Florida Attorney General

ANDER CRENSHAW, Minority Leader, Florida Senate

JAMES M.LOMBARD, Minority Leader, Florida House of Representatives

VAN B. POOLE,, Chairman, Florida Republican Party

GEORGE L. WAAS, Attorney with the office of the Florida Attorney General, Civil Division, Counsel for Appellee Smith, and Defendants Crenshaw, Lombard.

E. TOM RUMBERGER, Counsel for Defendant Poole

BRUCE ROGOW, ACLU Counsel for Duke et al.

STEPHEN A. KOCZAK, Plaintiff/Appellant/ Petitioner

THE HONORABLE FREDERICO A. MORENO, United States District Court Judge, U.S. District Court for the Southern District of Florida

ELEVENTH CIRCUIT JUDGE CARNES, SENIOR CIRCUIT JUDGES FAY AND JOHNSON

TABLE OF AUTHORITIES

CASES	Page
Anderson v. Celebrezze 460 US 938 (1983)	15,16
Burdick v. Takushi Slip Opinion, SC June 8, 1992	
Connally v. General Constr. Co., 269 US 3185 (1926)	18
Davis v. Bandemer, Docket No. 84-1244, dec. June 30, 86 106 US 2797	15
Democratic Party of the United States v. Wisconsin, 101 S. Ct. 1010 (1981), 450 U.S. 107 (1981)	i,8
Duke v. Cleland, 5 F.3d 1399 (11th Cir. 1993)	
Gray v. Sanders, 372 US 368 ((1963)	14
Koczak v. Smith, 89-3665 Unpublished (11th Cir. 1991)	
Lubin v. Panish, 415 US 709 (1974) ,6,8,18	
NAACP v. New York, 413 U.S.345,367, 93 S.Ct.2591,2603, 37 L, Ed.2d. 648 (1973)	
Nixon v. Condon, 286 US 73 (1932)	14
Nixon v. Herndon, 273 US 536 (1927)	14
Norman v. Reed, Slip Opinion, SC June 19, 1992	
Papachristou v. City of Jacksonville, 405 US 156 (1972)	18
Smith v. Allwight, 321 US 649 (1944)	14
Stallworth v. Monsanto Co. 558 F. 2d 257, 263 (5th Cir, 1977)	
Tashjian v. Republican Party, 107 S. Ct. 544 (1986)	i,9
Terry v. Adams, 345 US 461 (1953),	14
Williams v. Rhodes, 393 U.S. 23, 31 (1968)	7,15,18
United States v. Harriss, 347 US 612 (1954)	18

Supreme Court Rule 10	xii,2
Federal Rules of Appellate Procedure 3(b)	19
Federal Rules of Appellate Procedure 10(e)	19
Federal Rules of Appellate Procedure 27(1)	19
Federal Rules of Civil Procedure 19	16
Federal Rules of Civil Procedure 24	8,11

CONSTITUTION

ARTICLE II, SECTION 1 (5)	viii,5
ARTICLE IV, SECTION 2 (1)	viii,5
ARTICLE VI, SECTIONS (2) AND (3)	viii,5
First Amendment	ix,5
Fourteenth Amendment	ix,5

OTHER

Florida Law Weekly, Fed C 1185,1188	passim

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED IN THE CASE

UNITED STATES CONSTITUTION

ARTICLE II, SECTION 1 (5)

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years and been fourteen years a resident within the United States.

ARTICLE IV, SECTION 2 (1)

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

ARTICLE VI, SECTIONS (2) AND (3)

(2) This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

(3) The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and

of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or trust under the United States.

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the Government for a redress of grievances.

FOURTEENTH AMENDMENT, SECTION ONE

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FLORIDA STATUTES

CHAPTER 103 Section 103.101 **Presidential preference primary.**

(2) There shall be a Presidential Candidate Selection Committee composed of the Secretary of State, who shall be

a nonvoting chairman; the Speaker of the House of Representatives; the President of the Senate; the minority leader of each house of the Legislature; and the chairman of each political party required to have a presidential preference primary under this section.

(a) By December 31 of the year preceding the Florida presidential preference primary, each political party shall submit to the Secretary of State a list of its presidential candidates to be placed on the presidential preference primary ballot or candidates entitled to have delegates appear on the presidential preference primary ballot. The Secretary of State shall prepare and publish a list of the names of the presidential candidates submitted. The Secretary of State shall submit such list of names of presidential candidates to the selection on the first Tuesday after the first Monday in January each year a presidential preference primary election is held. Each person designated as a presidential candidate shall have his name appear, or have his delegates' names appear, on the presidential preference primary ballot unless all committee members of the same political party as the candidate agree to delete such candidate's name from the ballot. The selection committee shall meet in Tallahassee on the first Tuesday after the first Monday in each year a presidential preference primary is held. The selection committee shall publicly announce and submit to the Department of State no later than 5 p.m. on the following day the names of the presidential candidates who shall have their names appear, or who are entitled to have their delegates'

names appear, on the presidential preference primary ballot. The department of State shall immediately notify each presidential candidate designated by the committee. Such notification shall be in writing, by registered mail, with return receipt requested.

(b) Any presidential candidate whose name does not appear on the list submitted to the Secretary of State may request that the selection committee place his name on the ballot. Such request shall be made no later than the second Tuesday after the first Monday in January.

(c) If a presidential candidate makes a request that the selection committee reconsider placing the candidate's name on the ballot, the selection committee will reconvene no later than the second Thursday after the first Monday in January to reconsider placing the candidate's name on the ballot. The Department of State shall immediately notify such candidate of the selection committee's decision.

(3) A candidate's name shall be printed on the presidential primary ballot.....

(9). The presidential preference primary ballot shall be in substantially the following form:

OFFICIAL PRESIDENTIAL PREFERENCE
PRIMARY BALLOT
NO._____Party
_____County, Florida
Precinct No._____
(Date)
Signature of Voter Initials of Issuing Officer

Stub No. 1
OFFICIAL PRESIDENTIAL PREFERENCE
PRIMARY BALLOT
No_____Party
_____County, Florida
Precinct No.____
(Date)
Initials of Issuing Officer

Stub No. 2
OFFICIAL PRESIDENTIAL PREFERENCE
PRIMARY BALLOT
_____Party
_____County, Florida
Precinct No._____
(Date)

Place a cross (X) in the blank space to the right of the name of the presidential candidate for whom you wish to vote.

For President
(Name of Candidate)
(Name of Candidate)

or place a cross (X) in the blank space to the right of the name of the delegate(s) for whom you wish to vote.

(Name of Delegate) (Name of Candidate)

RULES OF THE SUPREME COURT

Rule 10

Considerations Governing Review on Writ of Certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of

certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

STEPHEN A. KOCZAK

Petitioner

v.

JIM SMITH,
Secretary of State, State of Florida;
ROBERT A. BUTTERWORTH,
Attorney General, State of Florida
ANDER CRENSHAW,
Minority Leader, Florida Senate
JAMES M. LOMBARD,
Minority Leader, Florida House of Representatives
VAN B. POOLE,
Chairman, Florida Republican Party

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

OPINIONS IN THE CASE

There are two sets of contradictory Constitutional opinions of the Court of Appeals in the two consolidated cases, Duke v. Smith, 92-4093 and Koczak v. Smith, 92-4186, both emerging out of D.C. Docket No. 92-134 Civ-Moreno in the District Court for the Southern District of Florida.

CONTRADICTORY CONSTITUTIONAL OPINIONS

I. Unconstitutional State Actions under Cover of Law

In case 92-4093, Duke v. Smith, the Appellate Court held on February 3, 1994 that the Florida Statute establishing the Presidential Primary Selection Committee ("Committee") was unconstitutional, thereby contradicting but not reversing its previous finding, Koczak v. Smith, 89-3665, Unpublished, June 25, 1991, that the identical Presidential Candidate Selection Committee was constitutional. (Please see Appendix 8 for decision in 92-4093 and Appendix 12 for decision in case 89-3665.)

Departing from the accepted course of judicial proceedings, in its decision on Duke v.Smith, 92-4093, the Appellate Court cited the same case precedents and used the identical constitutional arguments which Petitioner Koczak had invoked three years earlier in Koczak v. Smith, 89-3665 but the Court came to radically different, contradictory

Constitutional conclusions on the same matter. (Please see Appendices 7 and 8 and Florida Law Weekly Fed C 1185,1188.)

In the interval, Koczak's Petition for Writ of Certiorari to reverse 89-3665 had been DENIED on May 18, 1992, Supreme Court No. 91-1507, leaving *stare decisis* at that time the Appellate Court decision, 89-3665, Unpublished, that the Presidential Primary Selection Committee was constitutional. (Please see Appendix 13) .

Thus, the Appellate Court should have explained that it was reversing itself on a constitutional issue but it refrained from doing so.

II. Unconstitutional Denial of Intervention by Right

DISTRICT COURT

As shown by the Clerk's date stamp of January 29, 1992, the Miami lower court, prior to judgment, received Koczak's timely intervention by right. However, by adulterating the Clerk's record, numbering the entries out of order, the Judge pretended to have received the motion for intervention only on February 4. 1992, and on the basis of that falsity, denied Koczak's motion as untimely, contradicting the clear Constitutional decision of Stallworth v. Monsanto Co., 558 F 2d. 257, 263 (th Cir. 1977). (Please see Appendix 1 for Docket extracts showing numerical entries out of order and Appendix 3 for Clerk's Stamp.)

APPELLATE COURT

The Appellate Court confirmed the lower court's judgment but separated the texts of its own decision by placing part in case 92-4093 and part in case 92-4186. Further, the Appellate Court did not provide Koczak with a copy of its judgment in 92-4093 but left him in ignorance of its contents. Koczak obtained a copy only after filing a Motion for the Court to order the Clerk to transmit a copy of 92-4093 to him. (Please see Appendix 9 for court order responding to Koczak's motion to have clerk transmit copy of 92-4093 to Koczak)

Separating its decision into two texts, without any cross reference, the Appellate Court inserted only a brief footnote without any elaboration into 92-4093 which reads as follows: "Stephen A. Koczak filed an emergency motion to intervene which the district court dismissed as untimely. We consolidated his separate appeal of that dismissal with the instant case. We review that order under an abuse of discretion standard,*Stallworth v. Monsanto Co.*, 558 F.2d 257,263 (5th Cir.,1977) *citing NAACP v. New York*, 413 U.S.345, 367, 93 S. CT. 2591, 2603, 37 L. ED. 2D 648 ((1973). Because we find no such abuse, we affirm the dismissal" That Was All!! (Please see Appendix 8 and Florida Law Weekly Fed C1185, 1188)

In case 92-4186, Koczak v.Smith, on the other hand, the Appellate Court did not cite Stallworth al all and provided no elaboration but ruled, also on February 3, 1994, simply

as follows: "Because we find no abuse of discretion in the court's dismissal of Stephen Koczak's emergency motion to intervene, we affirm. AFFIRMED." That Was All!! (Please see Appendix 7)

JURISDICTIONAL GROUNDS IN THIS COURT

The order and opinion of the Court of Appeals denying timely petition for reconsideration and rehearing of decision and for review *en banc* was entered on July 6, 1994, reaffirming its Judgment of February 3, 1994. (Please see Appendices 3 and 10).

Koczak's motion for Stay of Mandate was denied on August 5, 1994 . (Please see Appen dix 11)

The statutory provision that confers jurisdiction on this Court to review this case by writ of *certiorari* is 28 U.S. C. #1254(1). Petition is submitted under Rule 10 of the Rules of the Supreme Court of the United States.

STATEMENT OF THE CASE

The bases for federal jurisdiction in the court of first instance were the United States Constitution, Articles II, IV, and V, Amendments One and Fourteen; Title 42 USC Sections 1983, 1985, 1986, 1981 et seq. and 1973; and Title 28 USC Sections 1331 and 1343.

Two issues evolved, not ordinarily related but entangled inextricably with each other through a concatenation of

contradictory judicial actions of the District and Appellate Courts.

Chronologically, in the instant case, the first issue relates to the contradiction by both Eleventh Circuit Courts of the standards established by the Fifth Circuit pursuant to decisions by the Supreme Court on the issue of "timeliness". Substantively, the second relates to the contradictory judgments by separate Panels of the Appellate Court on the same matter of the constitutionality of the Florida Statutes governing access to the ballot in Presidential Candidate primary elections.

The substantive second issue became enmeshed in the toils of the "timeliness" first issue because of (1) the extravagant developments in the lower court and (2) the Appellate Court's own prior constitutional decision in 89-3665 which it now planned, in 92-4093, to contradict but not reverse.. (Please see Appendix 1 for the Clerk's entries out of normal order; Appendix 8 for Extracts and the Florida Law Weekly Fed. C1185, 1188 for the full text of the Appellate Court's decision in 92-4093; and Appendix 12 for the Appellate Court decision in 89-3665)

Hereunder, for the sake of clarity, the issue of "timeliness" is discussed before the issue of the constitutionality of the Presidential Candidate Selection Committee.

I THE ISSUE OF TIMELINESS

Reversing a lower court decision denying an intervention on the grounds of "untimeliness", the Fifth Circuit set the

standard for abuse of judicial discretion in the matter of timeliness in Stallworth v. Monsanto Co. 558 F. 2d 257, 263 (5th Cir. 1977) which it issued pursuant to Supreme Court decisions in NAACP v. New York, 413 U.S. 345, 93 S.Ct. 2591, 37 L. Ed. 2d. 648 (1973) and United Air Lines Inc. v. McDonald, 97 S. Ct. 2469, 53 L. Ed. 2d. 423 (1977).

Affirming, in contradiction of Stallworth, the lower court's denial of intervention because of "untimeliness, the Appellate Court merely cited, as its own standard, Stallworth in a brief footnote in 92-4093, issued February 3, 1994. (Please see Appendix 8 and Florida Law Weekly Fed. C 1885, 1888)

The Appellate Court's footnote in 92-4093 was so brief that it did not indicate even whether it was applying Rule 24(a)(2) or Rule (24(b)(2). (Please see Appendix 8 and Florida Law Weekly Fed. C. 1885,1888)

Remarkably, Stallworth was **not cited at all** by the Appellate Court in the contemporaneous consolidated case 92-4186, issued separately, also on February 3, 1992, where it affirmed the lower court's decision denying Koczak's intervention as "untimely". (Please see Appendix 7)

The lower court, notably, did not cite Stallworth and did not indicate whether it was basing its decision on Rule 24 (a)(2) or Rule 24 (b)(2). Instead, it chose to render its decision on its own contrived appearance of "absolute" time, having first altered the chronological sequence of the Clerk's record entries by renumbering Koczak's complaint out of numerical order. (Please see Appendix 4)

INTERVENTION AS OF RIGHT

In Stallworth, the Court differentiated between Rule 24(a)(2), intervention by right and Rule 24(b)(2), permissive intervention, and developed four (4) factors as criteria to distinguish timeliness from untimeliness.

Intervention as of Right

Under Rule 24(a)(2), an individual is entitled to intervention as of right

> (1) when {he} claims an interest relating to the property or transaction which is the subject of the action and (2) he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that right, (3) unless {his} interest is adequately represented by existing parties.

On January 17, 1992, one day after the Florida Presidential Primary Selection Committee refused to add his name to the primary ballot, Koczak wrote to the Florida ACLU asking it to add his name to the list of plaintiffs it would be representing in its suit challenging the constitutionality of the Florida statute establishing the Selection Committee.

In this letter, Koczak notified the ACLU that he had been filing Applications, beginning January 3, 1992, with Supreme Court Justice Anthony Kennedy for a stay of certification of names for ballot access pending Koczak's filing a petition for writ of *certiorari* in Eleventh Appellate Court Case 89-3665 challenging the constitutionality of the Florida statute.

Because the Supreme Court Clerks had asked for further annexes, Koczak filed two subsequent applications, on January 13 and 17. Koczak enclosed a copy of the latter in his letter to the ACLU.

On January 22, 1994, Koczak sent to Florida ACLU via electronic facsimile a copy of the letter from the Florida Secretary of State confirming that he had qualified for submission of his name to the Selection Committee.

On January 24, 1994, Koczak wrote to Florida ACLU summarizing his conversations with Nina Vinik, ACLU counsel, who said that Koczak's name would not be added.

Koczak's January 24, 1992 letter stated:

> ----I was surprised by the reason given to me by Esquire Vinik on January 23 that my name was not being added because the ACLU did not have the resources. I was chagrined, I must confess, by theadditional observation tht the ACLU expected only those names of Presidential candidates to be added to the a ballot who were denominated in the suit itself. If I wanted to have my name added to the ballot (assuming, of course that the court agreed with the suit)I was told I would have to intervene separately.---

Because Koczak obtained only telephone tape recordings from the Miami Federal District Court and could not reach any Clerk, Koczak thereupon solicited help from ACLU for the names and telephone numbers of the attorneys filing the suit, the suit number, the name of the judge, the Court address and the filing fees.

ACLU declined to give any of this requested information to Koczak or to a Florida resident acquaintance, John Savas.

Thus impeded, Koczak finally managed to file his emergency motion to intervene by right, sending it on January 28, 1992 by overnight postal express mail. As part of his motion, Koczak described his applications to Justice Kennedy, his Motion to the 11th Circuit Appellate Court and his experiences with the ACLU. The Court Clerk received the motion on January 29, 1992, as proven by the Clerk's entry stamp. (Please see Appendix 3)

On January 30, 1992, Koczak succeeded in telephoning the clerk assisting Trial Judge Frederico Moreno. The Judge's clerk stated that the Motion was with the Judge in Chambers and that judgment had not as yet been made but was being then composed.

The foregoing clearly establish that the Judge knew that Koczak was intervening as of right because Koczak had shown, both at the time and also in his previous case, 89-3665, that he was a qualified Presidential aspirant with a direct interest in the matter at issue. The Judge also knew that, because the ACLU had declined to include him among the plaintiffs it was representing, Koczak's own intervention was the only way for him to protect his interest.

B. STALLWORTH'S FOUR FACTORS APPLIED TO KOCZAK'S INTERVENTION BY RIGHT

FACTOR ONE

"....Therefore, time that the would-be intervenor first became aware of the pendency of the case is not relevant to the issue of whether the application was timely." (page 265)

Comment: Even so, in Koczak's case, as soon as ACLU informed him that his name would not be added to the class already listed in the original filing, Koczak sought to intervene. Little time elapsed between the two events. Thus Factor One (1) supports the conclusion that Koczak's intervention was under every circumstance "timely"

FACTOR TWO

"....(1) It is apparent that prejudice to the existing parties other than that caused by the would-be intervenor's failure to act promptly is not a factor meant to be considered where intervention is sought under section (a). Therefore, to take any prejudice that the existing parties may incur if intervention is allowed into account under the rubric of timeliness would be to rewrite Rule 24 by creating an additional prerequisite to intervention as of right".(page 265)

Comment: Koczak's intervention was under Rule 24(a) as of right. Thus, Factor TWO (2) support the conclusion that Koczak's intervention was timely.

FACTOR THREE

"The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied.....is the rule, first announced in this court in Diaz and Lavino, that the district court should apply a more lenient standard of timeliness if the would-be intervenor qualifies for intervention under section (a) than if he qualifies under section (b).....Restating the rule in this fashion makes explicit its implicit foundation and permits varying degrees of harm among intervenors of the same type to be taken into consideration" (page 266).

Comment: Koczak had sued four years earlier, in 1988, in Koczak v. Smith, in the Northern District of Florida, pleading the selfsame arguments against the Selection Committee which the ACLU was to plead against the same Selection Committee in the Southern District in 1992. His appeal to the Supreme Court for *certtorari* was awaiting decision. The district judge was aware of Koczak's previous litigation, as shown by his footnote reference to Koczak v. Smith, Case No. TCA 88-40015 MMP in his Order of January 30, 1992 when denying sanctions against the ACLU. (Please see motion by Defendants for Sanctions, Appendix 2)

Moreover, Judge Dubina(who signed the Order declining to join cases 92-4093 and 92-4186) had served on the Panel deciding Case No. 91-3665. Thus the Appellate Court was fully aware of this earlier suit and its history. Further, the Attorney General included in his rebuttal Brief

on 92-4093 the fact that the Supreme Court had just denied *certiorari.* to Koczak. (Please see Appendices 6 and 12 for Judge Dubina's roles in cases89-3665, 92-4093 and 92-4186)

From the forgoing, it is evident that Factor Three (3) also supports the conclusion that Koczsak's intervention was "timely"

(Parenthetically, it is ironic that the Appellate Court in the 92-4093 case found **UNCONSTITUTIONAL** the very same Selection Committee which, in opposition to Koczak, it found **CONSTITUTIONAL** in the 89-3665 case. Was it because Koczak was then, also, acting Pro Se whereas the ACLU represented the Appellants in 92-4093?)

FACTOR FOUR

"The existence of unusual circumstances militating either for or against a determination that the application is timely..... For example, if a would-be intervenor who had failed to apply for intervention promptly after he became aware of his interest in the case could advance a convincing justification for his tardiness, such as that for reasons other than lack of knowledge he was unable to intervene sooner, this would militate in favor of a finding that his petition is timely."(page 266)

COMMENT: On January 17, 1992, the very first day after the Selection Committee had denied him a place on the ballot, Koczak communicated with ACLU for joint action, that is, ACLU (1) acting as Amicus Curiae in Koczak's Petition to the Supreme Court in 91-3665 and (2) including

him in its list of plaintiffs in the instant 1992 complaint. Because theACLU, violating its "duty for candor" was not honest with him, Koczak learned only at the last moments that his own interests would not be represented unless he himself intervened by right. He immediately began drafting an "emergency motion" to intervene and sent it on January 28, 1992 by overnight postal service to the Court. The Clerk received Koczak's motion on January 29, 1992 and delivered it to Judge Moreno's chambers the same day. Judge Moreno issued his decision on January 30, 1992, the next day. Thus Koczak's motion was not "untimely" even by the "absolute" measures of timeliness, let alone under the standards for timeliness in Stallworth.

FACTOR NOT TO BE CONSIDERED BUT IGNORED

"In addition to listing the factors that should be considered, it is important to mention some that should be ignored. We refer to what might be called 'absolute' measures of timeliness.....We explained in Lavino why a particular 'absolute' measure of timeliness, whether the request for intervention came before or after the entry of judgment was of limited significance" .... (page 266) (Underlining added.)

"...the mere fact that judgment already has been entered should not by itself require an application for intervention to be denied."....(page 266) (Underlining added)

"Applying the Test"

"When the facts of this case are assayed by the factors listed above, the conclusion that the district court abused its discretion in ruling that the appellants' petition for leave to intervene was untimely is inescapable." (page 266) (Underlining added for emphasis.)

COMMENT: These most explicit statements in Stallworth support incontrovertibly Koczak's position and confutes and confounds both the decision of Judge Moreno and of the Appellate Court.

Contrary to the decisions of the District and Appellate Courts, Koczak's Emergency Motion for Intervention was "timely" under the Stallworth standards.

II. UNCONSTITUTIONAL STATE ACTIONS UNDER "COVER OF LAW"

The fundamental issue of the constitutionality of the Florida Presidential primary statutes , because of state action under cover of law, arose in 1988, the first primary affected by the 1986 Florida Statute 103.101 (2)(a) and (2)(b) establishing the Presidential Candidate Selection Committee composed of representatives of the Executive and Legislative branches and members of the two recognized political parties.

The constitutional issue about the Selection Committee became convoluted by the erroneous decisions of the District Court for Northern Florida (1988) and Eleventh Circuit Appellate Court (1991) holding in effect in Koczak v.

Smith, 91-3665, that the newly created Selection Committee and the absence of any alternative ballot access were constitutional

It needs to be noted here that the earlier Florida Statutes, while containing provisions, such as the current Section 103.101 (9) which putatively would have been challenged on grounds of unconstitutionality, were not attacked because determined presidential candidates could acquire ballot access under standards applied by the Secretary of State.

With the elimination of standards applied by the Secretary of State and the transformation of the Secretary's role into the non-voting chairman of the newly established Selection Committee, Section 103.101(9) immediately became a most important further barrier to ballot access in the event the Presidential aspirant failed to be placed on the ballot by the Selection Committee. Thus, the 1986 Statute emplaced not one but two barriers to ballot access.

This unhappy 1988 situation was even more complicated on the occasion of the 1992 Presidential primary election by the decision of the ACLU to represent certain well-published, even notorious, Presidential candidates but, in violation of tenets of Federal Rules of Civil Procedure No. 19, to exclude Koczak from that list. The District Court for the Southern District of Florida also disregarded FRCP No. 19 in not joining Koczak with Duke v.

Smith, ruling instead to deny Koczak's intervention as "untimely."

Thus the "untimeliness" issue became intertwined and implicated by the extraordinary behavior of the American Civil Liberties Union of Florida Foundation, Inc., which frustrated every effort to introduce into the Record Petitioner Koczak's previous case, 89-3665 and by the District Judge's decision denying Koczak intervention.

Notably, because it served its purpose, ACLU included Kay v. Smith, TCA 88-40009 MMP (N. D. Florida) No. 89-3518 (11th Cir., 1990) in its Table of Citations but omitted Koczak v. Smith, TCA 88-40015 (N. D. Florida) which was decided by the Appellate Court under 89-3665 (1991).

The reason for the ACLU inclusion of Kay and the exclusion of Koczak lies in the fact that Kay had sued only the Secretary of State, the Attorney General and the Democratic Party. The members of the Presidential Candidate Selection Committee were not defendants in Kay.

Koczak, on the other hand, had sued all members of the Presidential Candidate Selection Committee, including JOHN W. VOGT, President, Florida Senate, and JON MILLS, Speaker, Florida House of Representatives (the designated Florida legislative members), in their capacities as members of that Committee, whose composition and very existence were challenged by Koczak as unconstitutional.

Thus, pursuant to its practice of "lack of candor", the ACLU, perhaps to escape Rule 11 Sanctions (see Appendix 2) , suppressed the fact of the prior suit of Koczak v. Smith against the Presidential Candidate Selection Committee as a collective state/political party body.

Although both the District and Appellate Courts were aware of this ACLU deception, both passed over it in silence despite the Appellate Court's ruling in 89-3665 as follows:

"PER CURIAM:

Assuming for the sake of argument that defendants have acted under color of state, plaintiff has failed to show a deprivation of a protected federal right.The pertinent entire election process does not fail to afford fundamental fairness. The district court did not abuse its discretion in denying a preliminary injunction because there was little likelihood of success on the merits.

AFFIRMED. (CLERK'S STAMP: JUNE 25,1 991) (Please see Appendix 12)

In this connection, it must be emphasized that the identically constructed Presidential Candidate Selection Committee existed in 1988 as in 1992. Thus the constitutional issue on the status of the Selection Committee was identical in both primary elections.

Because Koczak had been denied intervention on the grounds of "untimeliness", it was incumbent on him to submit two separate Briefs to protect his interests as a Presidential aspirant. The first Brief, submitted under 92-4186, concerned the issue of "timeliness". The second Brief, which the Appellate Court received contingently, related to the basic issue of the constitutionality of the Selection Committee

Koczak asked that his case on the issue of the constitutionality of the Selection Committee be joined under FRAP 3(b) and FRAP 27(1), in light of violations of FRCP 19 and FRCP 24 in the lower court. This was granted only to the extent that the cases would be submitted to the same Panel. (Please see Appendix 6.)

Seeking to resolve the issue of "timeliness" quickly so as not to prejudice his rights in the constitutionality issue, Koczak asked the Appellate Court to obtain affidavits from the lower court which would confirm the charges he was making (1)against the ACLU and (2) against Judge Moreno for altering the normal order of entries on the Clerk's docket sheet which were now out of numerical sequence. This was denied, in the same Order described immediately above, without prejudice to renewal under FRAP 10(e). (Please see Appendix 6.)

A comparison of the Briefs reveals first that Koczak, in 1988, was already challenging the constitutionality of the

Selection Committee under Florida Statutes 103, Section 103.101, Subsections (2)(a), (2)(b) and (9) while the ACLU challenge, in 1992, was limited exclusively to 103.101 Subsection (2)(c), a procedural paragraph added after 1988 to authorize the Selection Committee to reconsider its prior decisions under the authority of the provisions of 103.101(2)(a) and (2)(b).

Further, four years later in 1992, the difference between the Briefs submitted on 92-4093 was that, while the ACLU restricted itself to 103.101 (2)(c), Koczak challenged all the paragraphs relating to the Selection Committee as well as the absence of alternative ballot access under 103.101 (9). Thus Koczak's challenge was far more comprehensive.

Because the Appellate Court AFFIRMED the District Court's decision to deny Koczak intervention on the grounds of "untimeliness", **Koczak's far more comprehensive challenge to the Florida Presidential primary election laws was NOT NOTED OR DISCUSSED AT ALL even though its citations and arguments by the Appellate Court are identical with those in Koczak's Brief.**

Therefore, because the Appellate Court restricted itself only to 103.101(2)(c), the subsections of the Florida Statutes, challenged by Koczak, but not reviewed and not judged by the Appellate Court, still contain paragraphs which unconstitutionally will bar access to qualified

Presidential aspirants in the Florida Presidential primary elections in 1996.

Unless the Supreme Court grants *certiorari* or, in the alternative, issues a Summary Decision reversing the District and Appellate Courts on "timeliness", the Florida Presidential Primary Elections will again come under the cloud of unconstitutionality in 1996.

THE FLORIDA PRESIDENTIAL PRIMARY STATUTE NEEDS TO BE EXAMINED IN TERMS OF ITS CONSEQUENCES

Petitioner has reviewed the 1988 and 1992 events to beseech most earnestly the Supreme Court to examine closely the remaining consequences of Florida's Presidential primary election law. This Statute, and the conflicting and contradictory primary election laws in other States, have led to a growing public confusion about the fairness and equity of the American Presidential primary election processes nominating candidates for the offices of President and Vice President of the United States.

Petitioner also prays the Supreme Court to establish some clear standard to bring a modicum of order into the growing conflicting and apparently contradictory decisions of the various Circuit Courts.

REASONS FOR GRANTING THE WRIT

The instant case presents to the Supreme Court the most fundamental issues of uniformity of application of the laws by the District and Appellate Courts

First, there is the conflict with a decision of another United States Court of Appeals on the same matter.

Second, there is the issue of the Appellate Court's extrordinary behavior over the course of the last three years to conceal its contradictory decisions on the same constitutional matter.

Arising from the coincidence and concatenation of three constitutional issues, (1) "timeliness", (2) state action under "cover of law" and (3) residual unconstitutional bars to ballot access, this case tests the dedication of the courts. to apply uniform standards even to embarrassing situations so as not to depart from the accepted and usual course of judicial proceedings.

ABSENCE OF ALTERNATIVE MEANS OF ACCESS TO BALLOT

Even assuming that the statute establishing the Presidential Candidate Selection Committee is repealed, other existing provisions of the remaining Florida statutes will still bar future Presidential aspirants from access to the primary ballot. For example, no space is provided on the primary ballot to "write in" the name of the Presidential or Vice Presidential candidate and any effort to "write in" a name automatically defaces and renders void the entire ballot.

The Supreme Court held, in *Lubin v. Panish,* 415 US 709 (1974), involving a primary election case, that the absence of any alternative means of ballot access rendered a California statute unconstitutional.

In *Williams v. Rhodes,* 393 US 23 (1968), the Supreme Court held that the Constitution requires that access to the ballot and the electorate must be real and not merely theoretical.

Yet in the instant case, no alternate access in any form whatsoever was, is, or will be, available to petitioner, thus violating his, and his constituents', Constitutional rights of Due Process under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

CONCLUSION

Petitioner was denied access to the ballot on one ground in 1988 and on another ground in 1992.

In both cases, the courts so far departed from the accepted and usual courses of judicial proceedings that their actions were subject for an exercise of the Supreme Court's power of supervision.

Yet this did not take place in the 1988 election case because Petitioner was denied *certiorari*.

Therefore, Petitioner suffered "repetition yet evading review" on January 16, 1992, when he was again denied access to the primary election ballot. This was reinforced by the action of the District Court denying intervention for "untimeliness"

Will Petitioner experience a third denial of access?

Petitioner has been alerted by attorney acquaintances that , nless the Supreme Court is exceptionally interested this year in the application of the standards of uniformity to the lower courts even in cases such as this, the prospects for *certiorari* appear slight because of the following characteristics and technical circumstances involved:

(a) Koczak is appearing as Pro Se, a class of persons considered unqualified in Constitutional matters;

(b) the large volume of petitions to the Supreme Court results in radical culling with little prospect that Koczak would obtain *certiorari* ;

(c) Koczak was previously denied *certiorari* in Koczak v. Smith, 89-3665, Eleventh Circuit, Unpublished, June 25, 1991 and is, therefore, unlikely to succeed in any subsequent Petition;

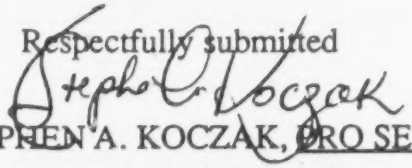
(d) in contradistinction to Koczak, Pro Se, the Appellant in 92-4093 was the American Civil Liberties Union, a litigant repeatedly appearing before the courts and considered to be qualified and politically potent, thus worthy of a hearing; and

(e) a finding for Koczak would embarrass the judiciary because of the factual adulteration by the District Judge of the Clerk's chronological record entries by placing them out of their normal and usual numerical sequence in order to make Koczak's timely intervention appear untimely?

Nevertheless, despite these considerations, Koczak submits this case to the Supreme Court in the belief that it is of high significance in the uniform application of judicial policy . Certainly, the lower courts should not feel secure and immune in the expectation that they can depart as much as they wish from the accepted and usual course of judicial proceedings because the burdens on the Supreme Court will militate against the latter's exercising its power of supervision over them.

For all the reasons given above, the petition for a writ of *certiorari* should be granted.

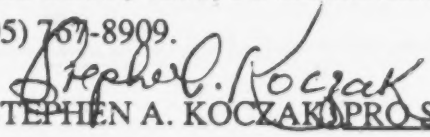
Respectfully submitted



STEPHEN A. KOCZAK, PRO SE.
2932 Macomb Street, N.W.
Washington, D. C. 20008
(202) 686-0953/363-4750

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 1994, I placed in the U.S. Postal Service Mail, first class, three copies each of this Petition to GEORGE L. WAAS, Esquire, Assistant Attorney General, Department of Legal Affairs, THE CAPITOL, Suite 1501, Tallahassee, Florida 32399-1050, Telephone (904) 488-1573 ; E. THOM RUMBERGER, Esquire, 11 East Pine Street, P. O. Box 1873, Orlando Florida, 321802-1873, Telephone (407) 425-1802; and BRUCE ROGOW, Esquire, 350 S.E. Second Street, #200, Ft. Lauderdale, Florida 33301, Telephone (305) 767-8909.



STEPHEN A. KOCZAK, PRO SE.

(In compliance with 28 U.S.C. #1746 and as required by Rule 29.5(c), there is being left at the same time as this Petition with the Clerk a further Proof of Service in the form of a separate Notarized Statement.)

APPENDICES

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

STEPHEN A. KOCZAK

Petitioner

v.

JIM SMITH,
Secretary of State, State of Florida;
ROBERT A. BUTTERWORTH,
Attorney General, State of Florida
ANDER CRENSHAW
Minority Leader, Florida Senate
JAMES M. LOMBARD,
Minority Leader, Florida House of Representatives;
VAN B. POOLE,
Chairman, Florida Republican Party

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

TABLE OF DOCKET ENTRIES, COURT ORDERS DECISIONS AND OTHER MATERIAL

DISTRICT COURT JUDGE FREDERICO A. MORENO

Pertinent Docket Entries, Jan/Feb 1994	Appendix 1
January 23,1994 Motion for Sanctions	Appendix 2
January 29,1994 Koczak Motion Intervene	Appendix 3
February 4, 1994, Judge Moreno's Denial	Appendix 4
February 29, 1994 Koczak Appeal Notice	Appendix 5

****

ELEVENTH CURCUIT APPEALS COURT JUDGES CARNES, FAY AND JOHNSON (NOTE: JUDGE DUBINA WAS A PANEL MEMBER ON CASE NO. 89-3665)

January 14,1994, Denial of Joining Cases	Appendix 6
February 3, 1994, Decision in 92-4186	Appendix 7
February 3, 1994, Decision in 92-4093	Appendix 8
March 29,1994, Clerk to Provide 92-4093	Appendix 9
July 6, 1994, Reconsideration Denied	Appendix 10
August 5, 1994 Stay of Mandate Denied	Appendix 11

****

ELEVENTH CIRCUIT APPEALS COURT JUDGES EDMONDSON, BIRCH, DUBINA ON CASE 91-3665

June 25, 1991 Appeal No. 89-3665 Denied	Appendix 12
May 18, 1991 writ of *certiorari* Denied	Appendix 13

****

Chronology and Role of ACLU Florida	Appendix 14

APPENDIX 1

SELECTED PERTINENT DOCKET EXTRACTS

PLEASE NOTE TWO MOTIONS FOR SANCTIONS BECAUSE MATTER IS RES JUDICATA,*STARE DECISIS* AND DENIAL OF SANCTIONS (ENTRIES 14, 26, 35)

PLEASE NOTE BREAK IN NUMBERING SEQUENCE WITH NUMBER 37 INSERTED BETWEEN 32 AND 33

DATE	ENTRY NO.	ENTRY TEXT
**********		
1/ 23 /92	14	MOTION by Ander Crenshaw, Van Poole, James M. Lombard for Rule 11 sanctions (vr) {Entry Date 01/27/92}
1/ 27 /92	26	MOTION by Jim Smith, T. K. Wetherell, Gwen Margolis for Rule 11 sanctions. (vr) {Entry Date 01/29/92)
**********		
1/ 28 /92	32	MEMORANDUM by Eugene F. McCarthy Randy Merridith,Greg Pappas in support of {28-1} motion to intervene by Eugene F. McCarthy, Randy Merridith, Greg Pappas (vr) {Entry date 01/29/92}

{PLEASE NOTE NEXT NUMBER IS NOT 33 BUT 37}

++++++++++

1/ 29 /92	**37**	**MOTION to intervene as Plaintiff by Stephen A. Koczak, and/or for stay of certification of names for Florida Presidential primary election pending filing of writ of certiorari challenging constitutionality of Florida Primary Election Law (vp) {Entry date 02/03/92}**

++++++++++

(PLEASE NOTE: PRECEDING NUMBER WAS NOT 32 BUT 37)

1/ 30 /92 33 Minute entry: Non-jury trial held. Motion for directed verdict taken under advisement (vp) {Entry date 01/31/92}

1/ 30 /92 34 MEMORANDUM OPINION (signed by Judge Frederico A. Moreno 1/30/92) CCAP (vp) {Entry date 01/31/92}

****

1/ 30 /92 35 ORDER denying {26-1} motion for Rule 11 sanctions, denying {14-1} motion for Rule 11 sanctions(signed byJudge FredericoA.Moreno on 1/30/92)CCAP (vp) {Entry date 01/32/92}

****

1/ 30 /92 36 JUDGMENT for Jim Smith, T. K. Wetherell Gwen Margolis, Ander Crenshaw,SimonFerro Van Poole, James M. Lombard against David Duke,Patrick J. Mahoney,Larry Agran,Lyndon LaRouche Jr., Guillermo Sanchez, Tasharay S. Otway-Smithers, David Baldwin, Edward J. Rosenfeld,Eugene Cottrell,ClaireUrdl,William Edward Bonnell, Susan Brooks Thomas (signed by Judge Frederico A. Moreno on 1/30/j92) CCAP/M(vp) {Entry date 01/32/92}

++

1/ 30 /92 -- CASE closed(vp) {Entry date 01/31/92}

++

{PLEASE NOTE NEXT NUMBER IS NOT 37 BUT 38}

1/ 31 /92 38 0RDER granting {25-1} motion for Mark S. Levine and Electra Theodorrides to appear pro hac vice (signed by Judge Federico A. Moreno on 1/30/92) CCAP (vp) {Entry date 02/03/92)

1/ 31 /92 39 ORDER granting {30-1} motion for Richard B. Kay and Edward H. Reise to appear pro hac vice (signed by Judge Federico A. Moreno on 1/30/92) CCAP (vp) {Entry date 02/03/92}

1/ 31 /92 40 ORDER granting [28-1]motion to intervene by EugeneMcCarthy,Randy Merridith,GregPappas (signed by Judge Frederico A. Moreno on 1/30/92) CCAP (vp) {Entry Date 02/03/92}

****

NOTE: NONPERTINENT ENTRIES HERE OMITTED

****

2/ 4 / 92 43 ORDER denying {37-1}motion to intervene as Plaintiff by Stephen A. Koczak, denying {37-2} motion for stay of certification of names for Florida Presidential primary election pending filing of writ of certiorari challenging constitutionality of Florida Primary Election Law (signed by Judge Federico A. Moreno on 2/4/92) CCAP (vr) {Entry Date 02/06/92}

****

++

END OF DOCKET SELECTED EXCERPTS

APPENDIX 2

IN THE UNITED SHATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CIVIL CASE NO.: 92-0134-CIV-MORENO
MAGISTRATE JOHNSON

David Duke, Patrick J. Mahoney, Larry Agran, Lyndon H. LaRouche, Jr. Guillermo Sanchez, Tasharay S. Otway-Smithers, David Baldwin, Edward J. Rosenfeld, Eugene Cottrell, Claire Urdl, William Edward Bonnell and Susan Brooks Thomas,

Plaintiffs,

vs.

Jim Smith, Secretary of State of the State of Florida, T. K. Wetherell, Speaker of the Florida House of Representatives, Gwen Margolis, President of the Florida Senate, Robert Johnson, Minority Leader of the Florida House of Representatives, Ander Crenshaw, Minority Leader of the Florida Senate, Simon Ferro, Chairman of the Florida Democratic Party, and Van Poole, Chairman of the Florida Republican Party, in their capacities as members of the Florida Presidential Candidate Selection Committee

Defendants.

_____/

VII

MOTION FOR RULE 11 SANCTIONS

Pursuant to Rule 11 of the Federal Rules of Civil Procedure Defendants Poole, Crenshaw, and Lombard hereby file this Motion for Sanctions against Plaintiffs and state:

1. Rule 11 of the Federal Rules of Civil Procedure provides for sanctions against the signer of any pleading, motion or other paper when that document is not well grounded in fact or law or is interposed for any improper purpose.

2. Plaintiffs filed the instant complaint seeking injunctive relief to prevent certain named Plaintiffs from being excluded from the Republican presidential preference primary ballot.

3. Plaintiffs filed the instant complaint despite the fact the clear weight of federal authority precludes such a cause of action.

4. Plaintiffs have violated Rule 11 by filing this action when it was not well grounded in fact or law.

5. Plaintiffs further violated their "duty of candor" under Rule 11, by failing to distinguish or even cite controlling contrary case law from federal jurisdictions, including specifically the Northern District of Florida.

MEMORANDUM OF LAW

Rule 11 of the Federal Rules of Civil Procedure provides in pertinent part:

The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The Plaintiffs filed the instant complaint seeking injunctive relief due to the fact several Plaintiffs were excluded from the Republican presidential primary ballot. However, every case discovered by the Defendants on this matter has clearly refused to recognize such a cause of action. *See Belluso v. Poythress,* 485 F.Supp, 904 (N.D. Ga. 1980); *Cross v. Fong Eu*, 430 F. Supp. 1036 (N.D. Cal. 1977). Defendants further incorporate herein by reference their Memorandum of Law in Opposition to Plaintiff's Motion for Permanent Injunction.

Furthermore, case law from the Northern District of Florida conclusively precludes Plaintiffs' constitutional challenge to section 103.101 of the Florida Statutes. *See Kay v. Smith,* Case No. TCA 88-40009-MMP; *Koczak v. Smith,* Case No. TCA 88-40015-MMP; *Kirk v. Whitehead,* Case No. 88-40016-MMP. In those cases, the district court conclusively found that the party selection process under section 103.101 was 'not constitutionally infirm." *Id.* The court further held it could not interfere with a party's plan for selecting candidates to be placed on that party's presidential preference primary ballot. *Id.; citing Tashjian v. Republican Party of Connecticut,* 107 S. Ct. 544 (1986); *Democratic Party of*

United States v. Wisconsin, 101 S. Ct. 1010 (1981). Plaintiffs further breached their "duty of candor" to this Court by failing to cite or distinguish these cases in any way.

WHEREFORE, for the foregoing reasons, Defendants respectfully request this Court impose sanctions against the Plaintiffs and award Defendants all costs and a reasonable attorney's fee, as well as all other such relief which this Court may deem just and proper.

E. THOM RUMBERGER (signed)
E. THOM RUMBERGER, ESQUIRE
Florida Bar No.: 0069480
DANIEL J. GERBER, ESQUIRE
Florida Bar No.: 0764957
RUMBERGER, KIRK & CALDWELL
A Professional Association
11 East Pine Street
Post Office Box 1873
Orlando, Florida 32802
(407) 425-1802
Attorneys for Defendants
Certificate of Service hand delivered or mailed 1/23/92

APPENDIX 3

IN THE UNITED STATES DISCRTICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CLERK'S DATE STAMP:- JAN 29 1992

Stephen . Koczak
Plaintiff

v.

Jim Smith, Secretary of State
State of Florida
Robert A. Butterworth,Atorney
General, State of Florida
Ander Crenshaw, Minority
Leader, Florida Senate
Robert Johnson, Minority
Leader, Florida House
of Representatives
Van B. Poole, Chairman
Florida Republican Party

Defendants

DC No 92-0134 Civ Moreno

RE: USCA Civil 89-3665
DC No TCA 88-40015-MMP
Motion to Intervene and for
Preliminary Injunction
to certify name of plaintiff
and/or stay of certification
of names for Florida Primary
Election pending filing of
Writ of Certiorari

Emergency Motion to intervene as Plaintiff in DC 92-0134 and/or Stay of Certification of Names for Florida Presidential Primary Election Pending Filing Writ of Certiorari Challenging Constitutionality of Florida Primary Election Law

---

Proceeding under Rule 24, Federal Rules of Civil Procedure, Stephen A. Koczak, PRO SE, moves for leave to intervene in an emergency capacity as plaintiff in order to assert as his own those claims set forth previously in DC 92-0134 filed by the Florida American Civil Liberties Union (ACLU) on behalf of other Presidential candidates who are

similarly situated as plaintiff Koczak for the Presidential Primary Election to be held on March 10, 1992.

For reasons incomprehensible to Plaintiff Koczak, the Florida ACLU has declined to amend its complaint and motion for preliminary injunction to include his name despite his being as fully qualified as the other plaintiffs. Even more incomprehensible, Florida ACLU has declined to provide plaintiff Koczak with the names and telephone numbers of the attorneys who have filed the complaint and motion for preliminary injunction, case 92-0134.

Plaintiff Koczak has complied with all the Florida statutes, rules and regulations for access to the primary election ballot in the same way as have David Duke, for the Republican Party, and Larry Agran, Lyndon LaRouche Jr. and others for the Democratic Party.

Like them, Plaintiff Koczak has ben notified by the Secretary of State that on January 16, 1992, the Presidential Candidate Selection Committee rejected his petition for access to the primary election ballot. (A copy of the letter of the Secretary of State appears as Annex 1.)

Like them, Plaintiff Koczak is already on the primary election ballot in other states, for example, New Hampshire, Colorado and Kansas. He expects to be on the ballot of several other states where the primary election campaign has not as yet begun.

Thus Plaintiff Koczak is qualified to be a party to the suit filed by the Florida ACLU BOTH BY RIGHT AND BY COMMON CAUSE.

Florida ACLU has asserted to Plaintiff Koczak that, should it be successful in this suit, the name of Plaintiff Koczak will not be added to the primary election ballot by the Secretary of State because his name was not part of the suit it filed. Thus his only recourse is to intervene.

Florida ACLU is aware that Plaintiff Koczak has a prior suit, about to progress form the US Appeals Court, Eleventh Circuit (USCA Civil No 89-3665,DC NoTCA88-40015MMP) to the Supreme Court for a Writ of Certiorari.

As evidence of his claims, Plaintiff Koczak attaches hereto as Annex 2 a photocopy of the Motion he has entered in the 11th Circuit Appellate Court.

Clerk of the 11th Circuit Appellate Court advised Plaintiff Koczak on January 27, 1991 that the Appeals Court cannot act on his Motion at that level, unless he first intervenes in the Federal District for the Southern District of Florida to file his claim for the primary election to be held on March 10, 1992. In the contingent eventuality that he is again denied access to the ballot and denied the reliefs for which he has petitioned, the Appellate Court would then consider his Motion for Stay of Certification of Names pending filing of a Petition for Writ of Certiorari.

Plaintiff Koczak calls the attention of the District Court to the fact that, in addition to the other obstacles he has encountered, he now finds that the Florida ACLU has not honored to this date his repeated telephone and written requests for a copy of the complaint and motion for injunction filed by the Florida ACLU. Plaintiff Koczak,

having himself filed a suit in 1988 challenging the constitutionality of Florida Statute 103.101 concludes that the premises, authorities and constitutional articles and amendments are, and cannot but be, in the main identical with those included in his own prior suit.

For this reason, though he has requested but not received a copy from the Florida ACLU and does not have a copy of that case before him, he herewith makes as his own the arguments, motions and authorities filed in 92-0134.

For the reasons cited above, Plaintiff Koczak moves on an emergency basis that he be permitted to intervene and that all the reliefs sought by the plaintiffs in case 92-0134 be extended and applied equally to him.

Respectfully submitted,

Stephen A. Koczak (signed)
Stephen A. Koczak, Pro Se
2932 Macomb Street, N.W.
Washington, D.C. 20008
(202) 686-0953/363-4750

CERTIFICATE OF SERVICE, sent January 28, 1994 overnight mail to Clerk, received by Clerk and stamped on January 29, 1992; sent regular first class mail to others.

APPENDIX 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CLERK'S DATE STAMP FEB 04,1992

CASE NO. 92-0134-CIV-Moreno

STEPHEN A. KOCZAK,

Plaintiff

JAMES SMITH, Secretary of State, State of Florida;
ROBERT A. BUTTERWORTH, JR., Attorney General, State of Florida
ANDER CRENSHAW, Minority Leader, Florida Senate
ROBERT JOHNSON, Minority Leader, Florida House of Representatives
VAN B. POOLE, Chairman of Florida Republican Party,

Defendants.

THIS CAUSE came before the Court upon Stephen A. Koczak's Emergency Motion to Intervene as Plaintiff and/or Stay of Certification of names for Florida Presidential Primary Election pending Writ of Certiorari challenging constitutionality of Florida Primary Election Law. The Court has considered the Motion and being otherwise fully advised in the premises, it is

ADJUDGED that the said Motion is **DENIED** as untimely as this Court, after trial, has entered Judgment in favor of the defendants.

DONE AND ORDERED in Chambers at Miami, Florida, this 4th day of February 1992.

/s/ FREDERICO A. MORENO
FREDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

APPENDIX 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Stephen A. Koczak, Plaintiff	(CLERK'S STAMP) FILING FEE PAID $105.00
v.	
Jim Smith, Secretary of State, State of Florida Robert A.Butterworth, Attorney General, State of Florida Ander Crenshaw, Minority Leader, Florida Senate Robert Johnson, Minority Leader, Florida House of Representatives Van B.Poole, Chairman Florida Republican Party	DC No 92-0134 Civ Moreno Notice of Appeal to Include USCA Civil No. 89-3665 DC NoTCA 88-40015 MMP Motion to intervene and for Preliminary Injunction to certify name of plaintiff and/or stay of certification of names forFlorida primary election pending filing of writ of certiorari

NOTICE OF APPEAL

Now comes Plaintiff, Stephen A. Koczak, Pro Se, to give notice hereby to the Honorable Court that he appeals herewith to the United States Court of Appeals for the Eleventh Circuit from the Judgment and Order of the Court of February 4, 1992 denying as untimely Plaintiff's Emergency Motion to intervene as Plaintiff in DC 92-0134 and/or Stay of Certification of Names for Florida Presidential Primary Election Pending Filing Writ of Certiorari Challenging Constitutionality of Florida Primary Election Law.

Plaintiff's emergency motions were received by the Clerk of the Court and delivered to the Judge in Chambers on

January 29, 1992. The Court did not render its judgment in Case No. 92-0134 Civ Moreno until the next day, January 30, 1992.

Having sought to intervene as a Plaintiff in 92-0134-Civ Moreno, Plaintiff is informed that Notice of Appeal of Duke et al v. Smith et al has Case No. 92-4093 in the United States Court of Appeals for the Eleventh Circuit. Plaintiff requests that those Appellants keep Plaintiff Koczak informed currently on the status of their Appeal.

This Notice of Appeal is being sent by expedited U.S. Postal Mail to the Court on February 29, 1992. Filing Fee is attached.

Dated February 29, 1992

Respectfully submitted

Stephen A. Koczak (signed)
Stephen A. Koczak Pro Se
2932 Macomb Street NW
Washington, D.C. 20008
(202) 686-0953/363-4750

CERTIFICATE OF SERVICE: February 29, 1992 first class mail to all parties.

APPENDIX 6

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-4093

DAVID DUKE,
PATRICK J. MAHONEY,
LARRY AGRAN,
LYNDON H. LAROUCHE, JR.
GUILLERMO SANCHEZ
TASHARAY S. OTWAY-SMITHERS,
DAVID BALDWIN,
EWARD J. ROSENFIELD,
EUGENE COTRELL,
CLAIRE URDL,
WILLIAM EDWARD BONNELL and
SUSAN BROOKS THOMAS,

Plaintiffs-Appellants

CLERK STAMP
JAN 14 1993

versus

JIM SMITH,
Secretary of State,
T.K. WETHERELL,
GWEN MARGOLIS,
ROBERT JOHNSON,
ANDER CRENSHAW,
SIMON FERRO,
VAN POOLE,

Defendants-Appellees

No. 92-4186

DAVID DUKE, ET AL

Plaintiffs,

STEPHEN A. KOCZAK

Movant-Appellant

versus

JIM SMITH,,
Secretary of State,
T. K. WETHERELL,
GWEN MARGOLIS,
ROBERT JOHNSON,
ANDER CRENSHAW,
SIKMON FERRO,
VAN POOLE,

Defendants-Appellees

ROBERT JOHNSON, Defendant

On Appeal from the United States District Court for the Southern District of Florida

---

ORDER;

Appellant Koczak' motion "under FRAP 3(b) and FRAP 27(1) to join cases 92-4186 and 92-4093 in light of issues FRCP 19 and FRCP 24 in the lower case, DC No. 92-0134- Civ-Moreno" is GRANTED to the extent that Nos. 92-4093 and 92-4186 will be submitted to the same panel for disposition.

Appellant Koczak's motion "to require district judge, court clerks and ACLU to file affidavits under oath in connection with issues raised in case 92-4186" is construed as a motion to supplement the record with affidavits and is

DENIED without prejudice to renewal in the district court pursuant to Fed. R. App. P. 10(e).

/s/JOEL F. DUBINA
UNITED STATES CIRCUIT JUDGE

APPENDIX 7

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-4186 **FILED: Feb-3 1994**

D.C. Docket No. 92-134-CIV-FAM

DAVID DUKE et al, Plaintiffs

STEPHEN A. KOCZAK Movant-Appellant

versus

JIM SMITH, Secretary of State of the State of Florida, T. K. WETHERELL, Speaker of the Florida House of Representatives, GWEN MARGOLIS, President of the Florida Senate, JAMES M. LOMBARD, Minority Leader of the Florida House of Representatives, ANDER CRENSHAW, Minority Leader of the Florida Senate, SIMON FERRO, Chairman of the Florida Democratic Party, and VAN POOLE, Chairman of the Florida Republican Party, in their capacities as members of the Presidential Candidate Selection Committee.

Defendants-Appellees

ROBERT JOHNSON, Defendant

Appeal from the United States District Court
for the Southern District of Florida

(February 3, 1994)

Before CARNES, Circuit Judge, FAY* , and JOHNSON, Senior

Circuit Judges

PER CURIAM:

Because we find no abuse of discretion in the district court's dismissal of Koczak's emergency motion to intervene, we affirm

AFFIRMED

---

*See Rule 34-2(b), Rules of the United States Court of Appeals for the Eleventh Circuit

APPENDIX 8

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-4093

CLERK'S STAMP
FEB 3 94

DAVID DUKE,
PATRICK J. MAHONEY,
LARRY AGRAN,
LYNDON H. LAROUCHE, JR.
GUILLERMO SANCHEZ
TASHARAY S. OTWAY-SMITHERS,
DAVID BALDWIN,
EWARD J. ROSENFIELD,
EUGENE COTRELL,
CLAIRE URDL,
WILLIAM EDWARD BONNELL and
SUSAN BROOKS THOMAS,

Plaintiffs-Appellants

versus

JIM SMITH,
Secretary of State,
T.K. WETHERELL,
GWEN MARGOLIS,
ROBERT JOHNSON,
ANDER CRENSHAW,
SIMON FERRO,
VAN POOLE,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Florida

-EXTRACTS-

III. CONCLUSION

Because we find that the reconsideration provisions contained in Florida Statutes 103.101 (2)(c) constitute state action which deprived the Plaintiffs of their First and Fourteenth Amendment rights, we REVERSE the district court's order.

The Judgment is REVERSED and the matter is REMANDED for further proceedings.

(Footnote) 6. Stephen A. Koczak filed an emergency motion to intervene which the district court dismissed as untimely. We consolidated his separate appeal of that dismissal with the instant case. We review that order under an abuse of discretion standard, Stallworth v. Monsanta Co., 558 F.2d 257, 263 (5th Cir. 1977) citing NAACP v. New York, 413 U.S. 345, 367, 93 S. Ct. 2591, 2603, L. Ed. 2d. 648 (1973). Because we find no such abuse, we affirm the dismissal.

APPENDIX 9

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-4186

DAVID DUKE, et al, Plaintiffs

STEPHEN A. KOCZAK, Movant-Appellant

versus

JIM SMITH, Secretary of State,
T. K. WETHERELL,
GWEN MARGOLIS,
JAMES LOMBARD,
ANDER CRENSHAW,
SIMO FERRO,
VAN POOLE,

Defendants-Appellees

On Appeal from the United States District Court for the Southern District of Florida

---

ORDER:

Appellant's unopposed motion for en banc consideration, construed as a motion to file suggestion of en banc consideration out of time, is GRANTED.

Appellant's motion asking the clerk to provide him with a copy of the opinion in 92-4093 is GRANTED.

/s/ E. A Carnes.

UNITED STATES CIRCUIT JUDGE

CLERK DATE STAMP MARCH 29, 1994

APPENDIX 10

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No.92-4186
CLERK DATE STAMP JUL 6, 1994

DAVID DUKE et al., Plaintiffs
STEPHEN A. KOCZAK Movant-Appellant

versus

JIM SMITH, Secretary of the State of Florida, T.K.WETHERELL, Speaker of the Florida House of Representatives, GWEN MARGOLIS, President of the Florida Senate, JAMES M. LOMBARD, Minority Leader of the Florida House of Representatives,ANDER GRENSHAW, Minority Leader of the Florida Senate, SIMON FERRO, Chairman of the Florida Democratic Party, and VAN POOLE, Chairman of the Florida Republican Party, in their capacities as members of the Presidential Candidate Selection Committee

Defendants-Appellees

ROBERT JOHNSON, Defendant

On Appeal from the United States District Court for the Southern District of Florida

---

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC
Before: CARNES, Circuit Judge, FAY* and JOHNSON, Senior Circuit Judges.

PER CURIAM:

(X) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestions(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT

/s/ EACarnes

UNITED STATES CIRCUIT JUDGE

*See Rule 24-2(b), Rules of the United States Court of Appeals for the Eleventh Circuit.

APPENDIX 11

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-4186

DAVID DUKE, et al
STEPHEN A. KOCZAK — Plaintiffs, Movant-Appellant,

versus

JIM SMITH, Secretary of State of Florida
T.K. WETHERELL, Speaker of the Florida House of Representatives, GWEN MARGOLIS, President of the Florida Senate, JAMES M. LOMBARD, Minority Leader of the Florida House of Representatives, ANDREW CRENSAW, Minority Leader of the Florida Senate, SIMON FERRO, Chairman of the Florida Democratic Party, and VAN POOLE, Chairman Of the Florida Republican Party, in their capacities as members of the Presidential Candidate Selection Committee

Defendants-Appellees

ROBERT JOHNSON — Defendant

On Appeal from the United States District Court for the Southern District of Florida

---

ORDER:

Appellant's motion for stay of mandate under FRAP 41(b) is DENIED.

EACARNES (signature)
UNITED STATE CIRCUIT JUDGE

CLERK DATE STAMP AUG 5 1994

APPENDIX 12

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

No. 89-3665
Non-Argument Calendar

STEPHEN A. KOCZAK
Plaintiff-Appellant

versus

JIM SMITH, Secretary of State
State of Florida
Defendant-Appellee

ROBERT A. BUTTERWORTH, Attorney General, State of Florida;
CHARLES WHITEHEAD, Chairman Florida Democratic Party;
JOHN W. VOGT, President Florida Senate; and
JON MILLS, Speaker, Florida House of Representatives,
Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Florida

(June 25, 1991)

Before EDMONDSON, BIRCH and DUBINA, Circuit Judges.

PER CURIAM:

Assuming for the sake of argument that defendants have acted under color of state, plaintiff has failed to show a deprivation of a protected federal right. The pertinent entire election process does not fail to afford fundamental fairness. The district court did not abuse its discretion in denying a preliminary injunction because there was little likelihood of success on the merits.

AFFIRMED.

APPENDIX 13

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

May 18, 1992

Mr. Stephen A. Koczak
2932 Macomb Street, N.W.
Washington, D. C. 20008

Re: Stephen A. Koczak
v. Jim Smith, Secretary of State of Florida, et al.
No. 91-1507

Dear Mr. Koczak:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

/s/William K. Suter
William K. Suter, Clerk

APPENDIX 14

CHRONOLOGY OF FACTS PRIOR TO INSTANT CASE

In 1984, Stephen A. Koczak, Petitioner, was admitted to the Florida Presidential Primary ballot and to the presidential primaries in New Hampshire and Louisiana.

In 1988, Koczak already had been admitted to the ballot for Presidential Primary elections in three states, namely New Hampshire (election scheduled, February 16, 1988), Missouri and Oklahoma (both elections scheduled for March 8, 1988) when he applied on January 4, 1988 to be placed on the Florida Presidential Preference Primary ballot.

In 1988, Koczak was denied admission to the Florida Ballot by the Presidential Primary Selection Committee, newly created by the Florida election in 1986.

Acting Pro Se, Koczak filed complaint, TCA 88-40015, on January 14, 1988, against the Secretary of State for denying him access to the ballot.

Judge Maurice Paul on January 19, 1988 denied preliminary injunction on the grounds that the role of the Secretary of State was purely "ministerial" and the "role of the Florida Democratic Party under Section 103.101 does not rise to the level of state action sufficient to state a claim under the Civil Rights Act."

Koczak amended complaint on September 12, 1988 adding as defendants John W. Vogt, President, Florida State Senate and Jon Mills, Speaker, Florida House of Representatives as state officials acting unconstitutionally under "cover of law"

Koczak was notified that defendants, Jon Mills and John W. Vogt, had moved identical defense as defendant Smith, to wit, that their roles in Selection Committee were purely "ministerial".

District Court Judge Maurice M. Paul, "(F)or the reasons set forth in this court's order of January 19, 1988", issued final summary judgment on May 24, 1989 in favor of all the defendants, including JOHN VOGT, President, Florida Senate and JOHN MILLS, Speaker, Florida House of Representatives. **YET THE CLAIMS OF VOGT AND MILLS THAT THEY WERE ACTING SOLELY AND PURELY IN A "MINISTERIAL" ROLE HAD NEVER BEEN EXAMINED, LET ALONE, ESTABLISHED PREVIOUSLY BY JUDGE PAUL AT ANY TIME DURING THE SIXTEEN MONTHS THAT THIS CASE WAS BEING LITIGATED THERE.**

Koczak, citing facts **not heard** by Judge Paul, including roles of John Vogt and Jon Mills, moved for stay, reconsideration because of "errors of fact leading to consequent errors in law", review by three-judge court and oral argument. Judge Paul denied Koczak's motions on July 7, 1989.

Koczak filed appeal on August 2, 1989.

Appellate Court Per Curiam DENIED on June 25, 1991 Koczak's Constittutional challenge, ruling as follows: "Assuming for the sake of argument that defendants have acted under color of state, plaintiff has failed to show a deprivation of a protected federal right....."

Seeking a clarification of the meaning and context of why and how he "has failed to show a deprivation of a protected federal right", Koczak asked for a rehearing on the grounds that "color of state" violated his Constitutional rights whether or not it violated his rights as a "protected class" under the Civil Right Act.. On September 27, 1991, the Court, Per Curiam, replied only, "The petition for rehearing filed by Appellant, Stephen A. Koczak, is DENIED".

Koczak filed a petition/suggestion for rehearing *en banc*.. On December 20, 1991, the Court denied the petition-/suggestion.

On January 23, 1992, the Court granted a Stay of Mandate "to and including 20 March 1992".

On March 19, 1992 Koczak filed a Petition for Writ of Certiorari which was DENIED on May 18, 1992.

MEANWHILE, IN JANUARY 1992, KOCZAK ONCE AGAIN SOUGHT ADMISSION TO THE PRIMARY BALLOT AND WAS ONCE AGAIN DENIED

ADMISSION BY THE PRESIDENTIAL CANDIDATE SELECTION COMMITTEE.

KOCZAK IMMEDIATGELY SOUGHT TO BE INCLUDED BY THE ACLU AMONG THE PLAINTIFFS IT WAS REPRESENTING IN ITS SUIT CONTESTING THE CONSTITIONALITY OF THE COMMITTEE.

REBUFFED BY THE ACLU, KOCZAK FILED AN EMERGENCY MOTION TO INTERVENE, A MOTION WHICH THE DISTRICT COURT DENIED ON THE ALLEGED GROUNDS OF "UNTIMELINESS."

THE CHRONOLOGY OF HIS UNSUCCESSFUL EFFORTS TO REVERSE THAT DENIAL IN THE APPELLATE COURTS IS NARRATED IN THE BODY OF THIS PETITION.

TABLE OF AUTHORITIES

CASES	Page
Duke v. Smith, 92-4093, 11th Cir. Feb 3, 1994	2,4,6,7,16
Kay v. Smith, 89-3518, 11th Cir.,1991	17
Koczak v. Smith, 89-3665 Unpublished 11 Cir, 1991	2,3,6,7,12,16,17,15
Koczak v. Smith, 92-4093, 11th Cir. Feb 3, 1994	2,4,6,7,12,25
Koczak v. Smith, 92-4186, 1th Cir. Feb 3, 1994	2,4,6,12,16,17,25
Lubin v. Panish, 415 US 709 (1974)	23
NAACP v. New York, 413 U.S.345,367, 93 S.Ct.2591,2603, 37 L, Ed.2d. 648 (1973)	4
Stallworth v. Monsanto Co. 558 F. 2d 257, 263 (5th Cir, 1977)	3,4,7,11
Williams v. Rhodes, 393 U.S. 23, 31 (1968)	23
United States Airlines Inc.,v. McDonald 92 S.Ct.2469, L.Ed. 423 (1977)	7

STATUTES	
28 U.S. C. #1254(1)	5
42 USC Sections 1983, 1985, 1986, 1981 et seq and 1973	5
28 USC Sections 1331 and 1343	5
Florida Statutes 103 Section 103.10	viii, 7,9,17,20